

**United States Postal Service and National Association of Letter Carriers, Branch 4016 and John Avey; Wayne Waite.** Cases 13-CA-19014-P, 13-CA-19397-P, and 13-CA-19398-P

February 9, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On September 19, 1980, Administrative Law Judge George F. McInerney issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

This case turns largely on credibility. Although we have decided to adopt the Administrative Law Judge's ultimate credibility resolutions, we have reservations about his approach to some credibility matters. For example, we are troubled by his blanket determination to discredit, based upon demeanor factors, testimony by Charging Party Avey, except when such testimony is corroborated concerning a series of comments allegedly made by Postmaster Williams to Avey over a span of several years. Although it is well settled that ordinarily the Board will not disturb credibility findings that are based upon observations of demeanor, there are instances in which the factor of demeanor is entitled to less weight. See, for example, *El Rancho Market*, 235 NLRB 468, 470 (1978). Indeed, in the instant case neither Williams nor any other Respondent witness denied that *some* of the comments testified to by Avey were made. Nor was the fact that certain such comments were made contradicted by other record evidence or by the inherent probabilities of the particular incident during which the comments were allegedly uttered. Furthermore, at least some of the comments testified to by Avey alone were of a piece with remarks by Williams that were testified to by fully credible witnesses.

<sup>1</sup> In sec. II, A, par. 19 of his Decision, the Administrative Law Judge referred to the incident of December 6, 1977. The incident in question occurred on August 6, 1977. In sec. II, A, par. 25, of his Decision, the Administrative Law Judge referred to the testimony of witness Donna Allen. The witness in question is named Donna Daniels. We note and correct these errors.

In much the same vein we are troubled, and puzzled, by certain observations made by the Administrative Law Judge in the course of resolving other credibility disputes.<sup>2</sup> For example, the General Counsel offered as additional background tending to show Postmaster Williams' animus an incident testified to by union official Dombrowski during which Williams allegedly characterized Avey as a "troublemaker" and "agitator." Although the Administrative Law Judge credited Dombrowski's *uncontroverted* testimony about this incident and Williams' statements, he apparently discounted its worth with the enigmatic observation that he could not "read any significance" into Dombrowski's "bold and conclusionary assertions."

Finally, the Administrative Law Judge's treatment of credibility in connection with the May 25, 1979, meeting of employees at the post office<sup>3</sup> is open to serious question in several respects. Suffice it to say that the Administrative Law Judge discredited testimony by Avey that was largely corroborated by Avey's fellow Charging Party, Waite, and by employee Carole Hedges, who was previously found to be a credible witness. In so doing, the Administrative Law Judge credited Williams, although previously he observed that Williams possessed a "remarkably poor memory"; employee Cousins, although previously he remarked that Cousins "had a very poor memory and was obviously uncomfortable on the witness stand"; and employee Daniels, although she "did not have too firm a memory of the meeting."

As indicated at the outset, our difficulties with the Administrative Law Judge's handling of credibility notwithstanding, we have decided to adopt his recommendation to dismiss the complaint in its entirety. In brief, even if we resolved in the General Counsel's rather than Respondent's favor the several credibility resolutions about which we have doubts, the ultimate result would not be changed. Thus, in agreement with the Administrative Law Judge, our examination of the entire record persuades us that, while there was a high degree of tension and conflict between Postmaster Williams and the Charging Parties, and this conflict frequently erupted into unseemly squabbles and recriminations, this was largely a matter of the personalities involved rather than the result of any union or other protected activity or considerations.

<sup>2</sup> In several instances, the Administrative Law Judge's expression of his findings is couched in such ambiguous terms that it is difficult to determine his precise meaning. See, for example, ALJD, the fourth paragraph before the end of sec. II, A, where the Administrative Law Judge apparently concluded that Williams' hostility toward Avey was personal, and not connected to Avey's status or activity as a union steward.

<sup>3</sup> The first incident alleged in the complaint to involve violations of the Act.

Simply stated, we think the General Counsel failed to present a *prima facie* case of discrimination. Accordingly, we shall dismiss the complaint in its entirety.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

MEMBER ZIMMERMAN, concurring:

I agree with the Administrative Law Judge's conclusion, for the reasons stated by him, that Respondent did not violate the Act as alleged in the complaint. With respect to the alleged unlawful discharge of Avey, I note that Respondent relied in part on previous disciplinary actions which had been rescinded through the grievance procedure or in the settlement of unfair labor practice charges. While this reliance may show an unlawful motive for Avey's discharge, as the General Counsel contends, I find that Respondent established that it would have discharged Avey in the absence of his exercise of rights protected by the Act. According to the credited testimony, there is no additional evidence of antiunion motivation. Further, leaving aside the conduct which had been the subject of arbitration or unfair labor practice charge settlements, it is clear that Avey's work record was poor and that in April 1979 his step increase was deferred because of inadequate work performance. This, coupled with his admitted failure to deliver postage due letters and the admitted loss of registered mail, is persuasive evidence that Respondent would have discharged Avey regardless of his exercise of rights protected by the Act.

### DECISION

#### STATEMENT OF THE CASE

GEORGE F. MCINERNEY, Administrative Law Judge: Based on a charge filed in Case 13-CA-19014-P on August 10, 1979, by National Association of Letter Carriers, Branch 4016, herein referred to as the Union, the Regional Director for Region 13 of the National Labor Relations Board, herein referred to as the Board, issued a complaint on September 24, 1979, alleging that the United States Postal Service, herein referred to as Respondent, or the Postal Service, had violated Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, herein referred to as the Act. On September 27, 1979, Respondent filed an answer denying the commission of any unfair labor practices.

Then, on December 14, 1979, John Avey, an individual, filed a charge in Case 13-CA-19397-P alleging that

he had been discharged by Respondent because he had engaged in union activities and had given evidence to the Board in connection with a prior charge. On the same date, Wayne Waite, an individual, filed a charge in Case 13-CA-19398-P containing the same allegations. On January 29, 1980, the Regional Director issued an order consolidating these two cases and Case 13-CA-19014-P, a consolidated complaint, and a notice of hearing. Respondent filed an answer<sup>1</sup> to the consolidated complaint continuing to deny the commission of any unfair labor practices.

Pursuant to the above-mentioned notice of hearing, and orders by said Regional Director dated February 1 and 15, 1980, a hearing was held before me at Chicago, Illinois, on April 28 and 29, 1980, at which all parties appeared and had the opportunity to present testimonial and documentary evidence, to examine and cross-examine witnesses, and to argue orally. After the close of the hearing the General Counsel and the Postal Service submitted briefs, which have been carefully considered.

Upon the entire record in this case, and from my observation of the witnesses and their demeanor, I make the following:

### FINDINGS OF FACT

#### I. JURISDICTION

The United States Postal Service provides postal services for the United States of America. Its main office is located in Washington, D.C., and it operates various facilities throughout the United States, including an office in Matteson,<sup>2</sup> Illinois, which is involved in this case. The Board has jurisdiction over this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101, *et seq.*

#### II. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. Background

The post office at Matteson, Illinois, is a relatively small installation located about 25 miles south of Chicago's Loop. It is apparently in a semirural area since of the four or five carrier routes working out of the office, at least one is a driving route, where the carrier places mail in boxes erected on the side of the road. During the period of this case the management staff consisted of one supervisor, and the postmaster, Bobbie Williams. Williams was a 21-year employee of the Postal Service, having started as a letter carrier. He worked as a station

<sup>1</sup> The answer was not filed until April 7, 1980. There is no record of a request for extension of time to file this answer and it was filed beyond the 10 days provided in Sec. 102.20 of the Board's Rules and Regulations and Statements of Procedure, Series 8, as amended. However, there was no motion to strike this answer, nor did the General Counsel move for summary judgment. In these circumstances I infer and find that the time for filing the answer must have been extended, and mention of that fact inadvertently omitted from the record.

<sup>2</sup> Misspelled as "Madison" throughout the record. The complaint alleges, the answer admits, and I find that National Association of Letter Carriers, Branch 4016, is a labor organization within the meaning of Sec. 2(5) of the Act.

manager in Chicago before being appointed postmaster in Matteson in 1975.

The two individuals who participated in most of the operative events of this case, and who were discharged from the Matteson post office late in 1970, are John Avey and Wayne A. Waite. Avey was hired as a part-time flexible carrier in December 1974 and Waite, in the same position, in March 1975. On September 15, 1976, these two employees transferred from the Richton Park post office to Matteson. Part-time flexible carriers work, or are supposed to work, an average of 40 hours in a 6-day week, filling in for regular carriers and also as clerks in the post office.

The carriers, both permanent and part time, at Matteson, were represented by Branch 4071 of the National Association of Letter Carriers in 1976.<sup>3</sup> In July 1977, Avey was either appointed or elected as alternate steward for Branch 4071, then on August 29, 1977, he was elected steward and Waite was elected alternate steward. In November 1977, the employees at Matteson affiliated with Branch 4016 of the same Union. Avey and Waite continued as steward and alternate steward until they were terminated.

The record is silent on relations between Avey and Waite and Williams before July 1977, although it is noted that Williams had asked them to transfer from Richton Park to Matteson in September 1976. Whatever those relations were, the evidence in this case shows a series of conversations and meetings between Avey and Williams where the postmaster showed a continuing dislike and hostility toward Avey. There is also a sharp conflict between the testimony of Avey and Waite, on the one hand, and Williams and Donna Daniels, a clerk and sometime supervisor, on the other concerning certain of these incidents.

The General Counsel introduced evidence on a number of these incidents which occurred prior to February 10, 1979, a date 6 months before the filing of the charge in Case 13-CA-19014-P, in order to establish the union animus and hostility of Williams toward these employees' union activities and later involvement with Board charges, and hence to show Williams' motivations for his subsequent actions.

The first of these incidents occurred in late July or early August 1977, shortly after Avey had become the alternate steward for Branch 4071. According to Avey, he was out on his route, admittedly late, around 4 p.m. when Williams drove up in his own car. Williams asked Avey why he had not called in to say he could not get the route done on time. Avey replied that the route was too long, and that his leg was bothering him.<sup>4</sup> Williams then told Avey that he was a troublemaker "because of not getting the route done, and because of the grievance" Avey had filed. Avey asked if that was a threat and Williams replied that he could take it any way he wanted.

Then Williams said that he had received a complaint that Avey had "destroyed" a mailbox at a house on his route. He told Avey that he was going to that house to

get a letter, and that Avey would be sorry. Avey then asked if he could go on and finish the route, and Williams said that was all right.

Williams could not recall the date of this incident, but testified that on the day in question he received a call from a "postal patron" who was irate because Avey had broken his mailbox, and had walked over some bushes while delivering the mail. Williams left the post office and found Avey out on his route. He asked if he had delivered to the complainant's address, then asked what happened. Avey explained that he put the mail in a slot, and the slot fell down. Avey admitted that he had walked across the lawn.<sup>5</sup>

The substantive difference in these versions of this conversation is reflected in the differing versions of the many conversations and confrontations between Avey and Williams throughout this hearing. Avey consistently claimed that Williams continually criticized him for his union activities, punctuating those criticisms with threats of discipline, suspension, and discharge. Williams did not deny the criticisms, but denied the threats. It is clear from his testimony, and from all of the other testimony in this case, that Williams' criticisms of Avey resulted from Avey's poor work and suspected malingering.

My own observation of Avey's demeanor while he was testifying, and a review of his testimony in the record of this case, convinces me that he is excitable, even hysterical, and, despite the General Counsel's references to his memory on dates and times, I find that memory was largely the product of his imagination. Williams exhibited a remarkably poor memory for dates and times. He was not even asked questions about a number of the incidents involving Avey. However, Williams impressed me as a generally credible witness on the basis of his demeanor and the record evidence of that testimony.

Thus I generally credit Williams, and, as noted further in this decision, I do not credit Avey's testimony on substantive matters unless it is independently corroborated, or made manifest by other established facts, or the inherent probabilities of a given situation.

In this first incident, out on Avey's mail route, I find the conversation occurred substantially as narrated by Williams. It would seem logical and probable to me that if Williams went out on the route in his own car because of a patron's complaint, he would first discuss the complaint with Avey. This is what Williams said that he did. Avey testified that Williams first mentioned the lateness of the hour, calling Avey a "troublemaker" for not getting the route done, and for filing a grievance. I do not believe that Williams made that last remark and find that Avey either imagined it, or manufactured it to improve his own case.

The next incident allegedly occurred on August 3 in the "swing" room.<sup>6</sup> Avey testified that he met there with Waite and Williams. According to Avey, Williams told the two employees that they were "messing up" his office because they had filed "this grievance" and that

<sup>3</sup> The clerks were represented by another union which is not involved here.

<sup>4</sup> Both these reasons are recurring themes in this case.

<sup>5</sup> Williams added that he saw the irate patron and later gave him four screws to fix the slot. They heard no more about it.

<sup>6</sup> This was a room in the post office containing chairs, a table, and employee lockers, used frequently in this case for meetings.

they "were going to pay for that grievance if we filed." Aside from the fact that this statement is self-contradictory, either the grievance had been filed or it had not been filed, Avey went on to say that Williams told him that a carrier was going to be suspended. Avey told him that he was not experienced in that kind of thing, to which Williams advised him to call Norbert Dombrowski, and that Dombrowski was a "good union man."

It seems to me wholly inconsistent for Williams, in the same conversation, at the same time, to threaten employees that they would "pay" for filing a grievance, and to advise one of these same employees to seek outside union help in what could only be another grievance based on the upcoming suspension.

Therefore, despite the fact that Williams did not testify on this incident, I find that there was no threat to employees because of their filing a grievance.<sup>7</sup>

As the result of Williams' suggestion, Avey did call Dombrowski and the latter agreed to come to Matteson on August 5, 1977.

Dombrowski testified that he met with Avey and Williams on that day, but Williams informed them that the employee to be suspended was a clerk, not a carrier. Then, according to Dombrowski, Williams went on to describe Avey and Waite as troublemakers; that he was sorry that he ever talked them into coming to Matteson; and that Avey was an agitator.

Neither Avey and Waite, nor Williams was asked any questions about this meeting. I find, then, that it occurred as testified to by Dombrowski, but I cannot read any significance into the union representative's bold and conclusionary assertions.<sup>8</sup>

Avey then testified about a meeting on the next day, December 6, 1977, attended by Waite and himself, and also by Williams and a carrier named Joe Schmidt, who was an acting supervisor. Williams had called the meeting, and opened it by saying that they were playing games with him. They had been filing grievances and "had bad work performances." He asked why they were doing this to him because they were in his office, and "we were as close to heaven as we could get." Williams added that they were under a special set of rules. Avey asked why, and Williams merely told Schmidt to be especially careful of everything they did and to write down a record of their mistakes.

No one else testified about this incident. Here, again, the addition of the reference to filing of grievances tends to convert a session devoted to bad work performance, and an indication from Williams to the acting supervisor to keep close watch on these employees, into a further manifestation of hostility and animus. However, based on my observation of Avey, as noted above, I do not credit his testimony that Williams mentioned the filing of grievances in this meeting.<sup>9</sup>

<sup>7</sup> I note also that Waite did not testify on this matter.

<sup>8</sup> From my observation of Dombrowski as a witness, I found him to be a vigorous and assertive person. It is unlikely that he would have let such remarks pass without comment or amplification.

<sup>9</sup> I further note that my observation of both Avey and Waite, and the other evidence in this case, shows that they are avid and vocal defenders of their perceived rights. It is hard, even impossible for me to believe that Avey and Waite sat silent and uncomplaining through so many of these incidents. This also contributes to my finding that Avey was not a

On October 15, 1977, Avey testified on another meeting between himself and Williams concerning a grievance filed as a result of Waite's suspension.<sup>10</sup> Avey testified that they discussed that, then went on to discuss a fire marshall's report, and the cleanliness of the office. In the course of this conversation Williams said to Avey that he should be more concerned about safety and cleanliness.

It was never made clear in this record what the responsibility of carriers were in safety matters or in keeping the office clean. Thus I can draw no conclusions from this conversation, which was not mentioned by Williams, except that there is no indication of hostility or animus toward Avey's union activities.

On November 22, 1977, there was a labor management meeting at the Matteson post office. Dombrowski testified that he attended, together with Avey, Williams, and Supervisor Jack Laging. Dombrowski quoted Williams as saying that Avey and Waite were troublemakers, and that before they arrived at the Matteson Post Office he had never had any trouble with the Union. Then, according to Dombrowski, Williams launched into a 20-minute exposition on problems with the toilets in the men's room. At the end of this, Dombrowski said that he informed Williams that he had "diarrhea of the mouth." Williams then said that he was going to report Dombrowski for improper and abusive language. Dombrowski replied that it was his right, but, as far as he was concerned, the meeting was over.

Avey testified about the same meeting, but he stated that the supervisor present was Joe Schmidt. Avey agreed with Dombrowski that there was talk about the cleanliness of the post office, but his version of Williams' comments was that the latter said bringing Avey and Waite to Matteson was the second biggest mistake of his life, and that Avey and Waite were "clowns." Dombrowski finally said that Williams had a big mouth, at which point Williams "kicked" them out and said, "this is over." Then, according to Avey, Williams asked Schmidt whether Avey had permission to leave his route and, on being informed that he did not, told Avey that he faced disciplinary action. Avey then shouted, "Why don't you give me a letter of warning now?"

There was more testimony on this meeting from Donna Allen, a clerk and sometimes acting supervisor. She recalled the talk about the cleanliness of the post office, and that Williams told Avey to do something about making the post office a little cleaner, but she denied that he called Avey a clown. Williams did not testify about this meeting.

This confused and contradictory testimony does little to support the General Counsel's assertion that Williams was engaged in a campaign against Avey motivated by hostility and animus. Where the General Counsel's two witnesses cannot agree on who was at the meeting, what

credible witness. In my view there is as much left unsaid as spoken in Avey's reports of his encounters with Williams.

<sup>10</sup> This was not further explained in the record, but in the notice of removal letter to Waite in November 1979 it is noted that he was suspended in October 1977 for "failure to follow instructions and making a verbal threat to a postal supervisor."

was said on the critical issue of animus, and how the meeting concluded, I cannot and will not find that animus has been established. Daniels' testimony, brief as it was on this meeting, does not add much except to confirm that Williams was concerned about the cleanliness of the post office. I have found Daniels to be a credible witness in her testimony about other events in this case, and I find that Williams did not call Avey a clown.<sup>11</sup> Other than that, I find that the testimony of Avey or Dombrowski is insufficiently reliable or credible to allow any findings of animus or hostility.

On December 12, 1977, Avey testified that he met with Williams to discuss grievances dealing with carrier timecards, vehicle safety, the cleanliness of the post office, and nonpayment to Avey for a labor-management meeting. When Avey came into Williams' office, Williams asked him if he had called a union election on the clock in the post office. Avey replied that it was none of Williams' business. Williams then said that he would investigate the matter and if it turned out to be true, he promised that he would do something about it.

They then began to discuss the first grievance and Williams interrupted to say that he had a note from a supervisor that Avey had failed to carry a route out on December 9. Williams then said that he had Avey now, and that he had been waiting for him to do something like that. Avey asked if he would listen to his side of the story, but Williams said he would but it would not make any difference. They went on to discuss the grievances, which were all denied by Williams. Williams did not testify on this incident.

Here again, while I find Avey's testimony thoroughly unreliable, I note two things about this account: first, the rude and impertinent reply made by Avey to Williams' legitimate request on the use of Postal Service time and premises for a union election; and second, the fact that so many facts or alleged facts are not followed through in further testimony by Avey or any one else and just disappear after being mentioned once. In this instance there was no further testimony either on the union election or the alleged failure to carry a route on December 9. This further reinforces my belief that many, if not all, of these incidents were mere figments of Avey's imagination, perhaps the result of his own evident hostility toward Williams.

On December 15, another labor management meeting was held at Matteson. All the carriers and clerks attended this meeting which was chaired by Williams. The agenda for these meetings were prepared by representatives of the two unions which represented these two groups. Avey had prepared the agenda for the carriers and had given it to Williams the day before.

Avey testified that Williams asked each carrier whether they had seen the agenda and each replied that he had not. Williams then said to Avey, "See what a bad steward<sup>12</sup> you are, you didn't show this agenda around, I have to assume that these are your gripes and not theirs." According to Avey, that was "where it ended" and they went on to discuss the items on the agenda.

Waite testified that Williams asked Avey why Bobby Moyer, another carrier, did not have a voice in the union election. Then Avey and Moyer were arguing about whether Moyer was absent on some day, presumably the date of the election. Waite went on to say that Williams then asked all the carriers if they had seen the agenda, and they all said they had not. Williams then said that he had to believe all the gripes were John Avey's gripes.

Donna Daniels, after some difficulty in remembering which meeting she was being asked about, finally testified that Williams had a list at the meeting and that he proceeded to go down the list. He was stopped by Moyer who wanted to know where the list came from. Williams said it came from their union representative. Moyer asked who his union representative was and Williams replied that John Avey was the union steward and Waite was the alternate. Moyer then said that he did not vote for Avey as his representative, that he did not know about the agenda, and that Avey should have brought it to the other carriers first. Joe Schmidt<sup>13</sup> said that he did not need or want Avey to represent him. He knew nothing about his list and felt that it should have been brought to the other carriers first. Schmidt then left the meeting.

Williams stated that he began to go through the carriers' agenda and had reached the third item when Moyer asked where he got the list. Williams said it was given to him by the union representative. Moyer said that he knew nothing about the union representative, and Williams identified Avey and Waite as the union representatives and that they had given him the list. Both Williams and Daniels denied that he said anything about the quality of Avey's stewardship.

All of the witnesses agreed that, after the initial exchange, Williams went on to discuss all of the items on the list.

I credit the versions of this meeting given by Williams and Daniels. While Avey's version of Williams' remarks about him was corroborated by Waite, I note that, even here, Waite's story mentions an argument with Moyer which Avey omitted. That reference to the argument tends to corroborate Daniels and Williams more than Avey. Further, even Waite did not corroborate Avey's statement that Williams referred to Avey as a bad steward.<sup>14</sup>

On December 28, 1977, Avey had a meeting with Williams to discuss grievances and also to tell him that Dombrowski could not be at a labor-management meeting scheduled for December 31. Williams said there had been a labor-management meeting on December 24. Avey said he did not know about it, and Williams replied that he had been there; that the clerks and maintenance union had been there; and why Avey had not been there. Avey said that he had not seen the notice and that he was not designated for that task by the union president. Williams said that showed what a bad union ste-

<sup>11</sup> Or a "clog" as related in the record.

<sup>12</sup> Certain errors in the transcript are hereby noted and corrected.

<sup>13</sup> By this time Schmidt, previously identified as an acting supervisor, was apparently back as a carrier again.

<sup>14</sup> Even though Avey's performance as a steward could legitimately be criticized for not discussing the agenda with the other carriers before the meeting.

ward he was, that he did not even show up for meetings that affected his membership.

At this point in his testimony, Avey began to ramble and to talk about matters which may have concerned him at this meeting or later, but did not appear to be tied in or connected to the events of this case. For example, Avey began testifying about a grievance on vacation. He then stated:

The day before he told me that I had responsibilities to see that the carriers had got their bids in on January 3rd, I told him that I would check it out when I found that he was wrong. I found that he didn't file it in the new contract.

After I filed the grievance he told me that he knew what he had done was against the contract, but he assumed that since I was he would give me the responsibility. He also said the carriers were telling him that I was running things and not him. As far as he was concerned I thought that I was the boss.

Avey continued in much the same vein, testifying on this conversation:

At this time I filed the supervisor grievance<sup>15</sup> and he said that he had contacted all of the supervisors to candidate for the job at that time. He told them about my trouble making. He also told me that since I had this union job I was not doing a fair days work for a fair days pay. The trouble that I was getting from them had just begun. I had done what he said I would have been all right. He said there was still time to do what he said.

Avey went on to say that Williams told him they were going to have a father-son relationship with Williams as the father and Avey the son. Avey then told him that he was violating his rights, and asked Williams if he had ever heard of the Bill of Rights. Williams replied that his people had been fighting for it for 400 years.

Williams then told Avey that he faced further disciplinary action for leaving two first-class letters on December 24 and had "gone over a lawn" on that date.<sup>16</sup>

I have quoted from this testimony at length to show the rambling, pointless, and disorganized nature of much of Avey's testimony. It seems clear to me that Avey was a sloppy and a careless worker. He admitted to an inability to finish his routes on time. He was suspended on January 7 for refusal to obey a direct order from Acting Supervisor Joe Schmidt on December 9. Even though that suspension was later overturned by an agreement between the Union and the post office, Avey did not deny that he had disobeyed the order. This disrespectful attitude toward Williams is evident from his own testimony both before and after this incident on December 28, 1977. In these circumstances it is only natural and logical that Williams should speak to Avey concerning his shortcomings. This explains the number of meetings the two had, and the various threats of disciplinary action in

those meetings. Avey has attempted to convert these meetings and threats into a campaign against his union position and activity. It appears to me, however, that Avey attempted throughout his employment at Matteson to use his union office as a shield to cover his own deficiencies as a letter carrier, then carried that intention into his testimony in this hearing, inserting references to the Union and his function as steward into conversations which, in reality, were concerned with his work deficiencies. Thus, I do not find any evidence of antiunion motivation in this conversation of December 28, 1977.

After his return from his first suspension, on January 20, 1978, Avey testified about another conversation with Williams. Avey stated that he attempted to file a grievance concerning a special route check on one of the routes. Williams refused to accept the grievance because Avey was not the regular carrier on the route.<sup>17</sup> Williams then told Avey that he had received a nine-page letter from a patron concerning Avey's "bad mail delivery." Williams denied Avey's request to see the letter, then said that he had to make a telephone call. According to Avey, "he called down to South Suburban,"<sup>18</sup> I would imagine, and he called Dombrowski a liar, that he had filed vacation on the 6th of January." Avey went on to say that Williams told him that he was going to call a postmasters' meeting and was "going to take care of Dombrowski with his tricks and antics." Williams then went on to say that Avey was given a suspension to keep his mouth shut and it obviously had not worked, adding that he was going to cut the hours of the part-time flexible carriers because of Avey's union activities. Avey then continued with a discussion about Bernard Clemente, later identified as another carrier in the Matteson post office; someone named Conway, not otherwise identified; threats to beat up Avey; and an alleged statement by Williams that he would not tolerate Avey's attitude or activities. Williams denied several of these allegations.

Even allowing for the unsatisfactory state of the transcript at this point, this testimony demonstrates further Avey's instability as a witness. I disregard the last portion of this testimony, and do not credit the first part.

Avey attempted to file this grievance on January 21, and Williams refused to take it at that time. It was filed and denied on January 24, but, as with so many other incidents in this case, there is no further evidence on what happened to the grievance, if ever one existed.

On January 26, 1978, there was a severe snowstorm in the area and one carrier, Carole Hedges, was unable to finish her route because of the snow and the failure of her vehicle. She called the post office from her home about 6 p.m. and was advised by Williams to secure the remaining mail there for the night. According to Avey, Hedges felt that she should be paid for the time she spent in her home with the mail that night. She took this up with Avey, and the two of them went to see Williams on February 6. They discussed the grievance with him in an

<sup>15</sup> Concerning the allegation that a person was acting as a carrier and a supervisor at the same time.

<sup>16</sup> This is another dead end in Avey's testimony. There is no further evidence on this alleged threat.

<sup>17</sup> There was no evidence as to whether Williams' refusal, if it in fact happened, was justified, or not justified by Postal Service regulations or practice.

<sup>18</sup> South Suburban is the name by which the parties referred to the office which had supervisory authority over the Matteson post office.

inconclusive fashion. Williams finally, according to Hedges, threatened her with discipline for coming in late on the morning of January 27 and then turned to Avey and said that he had had a lot of accidents, and he was going to take action against him as well. Williams concluded by saying that he would call South Suburban and if they said to pay her, he would.

After this, according to Hedges' credible and undenied testimony, Williams asked Avey to leave the room. He then told Hedges that she was making a mistake keeping Avey as steward. Williams did not deny any of this.

From this credible testimony by Hedges, disregarding Avey's mainly unintelligible statements about the meeting, I find that Williams did in fact react with threats when pressed on a grievance, and, further, that he disliked Avey as a steward. Whether these motives served to spark the later actions against Avey and Waite is questionable, and will be discussed below.

Soon after that Avey and Williams had another meeting or a telephone conversation. The record is not clear on this. They talked about the Hedges' grievance, then Williams went on to say that he would like to take off his postmaster's badge and take Avey outside and teach him a lesson. He said his wife had told him that Avey was not worth it. Williams went on to say that his first priority was to fire Avey.

I do not credit Avey's account of this meeting, which was not denied by Williams, but apparently as a result of the meeting the Union filed a charge with the Board on February 14, 1978, in Case 13-CA-17289-P. As a result of this charge, a meeting was held between union and postal officials on March 23, 1978. No one testified as to what was said at this meeting, but matters were resolved by the rescission of Avey's January suspension, the withdrawal of Case 13-CA-17289-P, and a promise by the post office that labor relations in Matteson would stabilize in the future.

In fact matters seemed to settle down for a while. Other than one grievance concerning Avey, and one involving a letter of warning to Waite, both of which apparently were amicably settled, nothing of consequence occurred until June 1978.<sup>19</sup>

Early in June, Supervisor Jack Laging notified Avey that his government driver's license (SF-46) was to be revoked as of June 15 because he had had nine accidents in 3 years. Avey filed a grievance over this and also another charge with the Board in Case 13-CA-17683-P on June 5, 1978.

The grievance and the charge were settled after meetings between Union and Postal officials.

In July 1978, Williams was removed as postmaster of Matteson.<sup>20</sup> He returned as postmaster in October 1978 and in November he had a meeting with Dombrowski. The record does not reveal where this meeting was held, or why, or who was present aside from Williams and Dombrowski. Despite the fact that no proper foundation

was laid, Dombrowski testified without objection that during this meeting Williams referred to Avey and Waite as "dummies" and "clowns" and that they did not know how to represent the people at the Matteson post office. Williams further said that as far as he was concerned Avey would not process any grievances in that post office, and he would not listen to any grievance that Avey processed or tried to process. Both Williams and Donna Daniels denied that he had ever referred to Avey and Waite as "dummies" or "clowns," although there is no evidence that Daniels attended that particular meeting in November.

I have generally credited Williams throughout this case. However, I have previously found Dombrowski to be a credible witness. In this instance I find that Williams said the things attributed to him by Dombrowski but because of the lack of foundation for the conversation, and the failure of the record to show the context in which the remarks were made, the impact of these remarks is slight. All of the evidence shows that Avey and Waite, particularly Avey, were not good employees. Avey was a chronic user of overtime, a carrier whose careless habits had by this time produced at least two complaints from patrons. His driver's license had been suspended for nine accidents in a 3-year period.<sup>21</sup> Avey's impudence to and disrespect for his superior is shown by Avey's own testimony. Waite, too, had work problems. He had been suspended in October 1977 for failure to follow instructions and for threatening a supervisor.

In the absence of any evidence as to how these stewards actually framed and presented grievances, I think it is permissible to infer that Williams' wrath was directed toward the benefit of employees in receiving adequate representation, rather than in hostility toward the representation process itself.

In January 31, 1979, according to testimony of Avey and Waite, Avey asked Williams to discuss some union business with him and Williams agreed. They then met with Waite and Clemente, another carrier. The conversation began with a discussion about vacation scheduling. Williams told the employees that the bids for vacations had to be in that day. At this point Avey requested permission to call Dombrowski, and it was granted. In the telephone conversation which followed, Dombrowski told Avey that a previous suspension of Clemente had been reduced to 2 days. After that Avey told Clemente the good news. Williams then told Avey that he had nothing to do with the reduction of the suspension, that he himself had called South Suburban and had it reduced. He then said that if Avey was a good steward the suspension never would have happened. According to Waite, Avey then asked why he had received a suspension, and Williams answered that that was a special suspension. Williams concluded by saying that Avey was more worried about vacation bids than defending a carrier.

Assuming that this incident happened, there is no evidence that what Williams said was not true. There was no development of the history of Clemente's suspension,

<sup>19</sup> Avey testified at length about a meeting with Jack Laging and Williams on June 6, 1978. His testimony on this meeting is so rambling, discursive, and at times incoherent, that I have rejected it as having no probative value.

<sup>20</sup> Williams testified that he was removed for poor management. He stated that he did not feel that Avey was responsible for his removal.

<sup>21</sup> The suspension, to be sure, was lifted by agreement as noted above, but the fact of the accidents was undenied.

nor of the processing of the grievance which led to a reduction of that suspension. If Avey's work record is reflective in any way of his functioning as a steward, Williams could very well be led to criticize Avey's stewardship.

To conclude this summary of background evidence, I do not believe that the General Counsel has established by a preponderance of the credible evidence that Williams' dealings with Avey were motivated to any great extent by antiunion hostility or animus toward Avey's union activities. While the usual marketplace forces are not operative in an organization like the Postal Service, there were pressures on Williams to run his office under guidelines and standards imposed from above. Williams must have felt these pressures keenly, particularly after he was removed from his job for failure to meet those standards. He must likewise have felt pressures from his staff to conform to contractual standards in labor relations. Avey certainly aggressively and continually applied such pressure by the filing of grievances and the pursuit of employee complaints. But given all the credible evidence, and in view of my discrediting of Avey's testimony, I cannot find that this activity was the principal cause of Williams' words or actions.

#### *B. Avey's Suspensions*

On May 3, apparently in 1978, Avey hurt his knee. The record does not show whether this happened on or off the job, or what type of injury it was, or how severe, or whether he was out of work for any period of time. The only evidence is Avey's statement that he was injured, and that he later found "it was a form of arthritis." He visited a doctor, as he put it, 15 or 20 times.

During the summer of 1978, on August 7, W. B. Caton, who was officer in charge at Matteson,<sup>22</sup> ordered Avey to report to a clinic chosen by the Postal Service to be examined to determine his fitness for duty. The results of this examination do not appear in the record. However, Avey must have been required to take another examination because there is a report in the record from a Dr. Smit, dated December 26, 1978, indicating that Avey was examined on that day. There are also reports on X-rays dated December 21, 1978, attributed on their face to fitness for duty examinations.<sup>23</sup>

Dr. Smit's report concluded that Avey was fit for duty and recommended that he "work up to his long route gradually and if there is any evidence of knee discomfort again that this be treated very early."

The record does not reveal what happened when these reports reached the Matteson post office, but Avey returned to his own doctor on January 12, 1979, and obtained a report which contained two parts. The first stated that he could return to light duty;<sup>24</sup> that he could stand or walk for 1 hour; that he could not lift more than 35 pounds; and that he could "have a driving route." The second part of the report stated that "Mr. John Avey can return to full duty 2/28/79." Avey testified

that he showed the first part only to Debra Rogers on January 13, 1979. Rogers is not otherwise identified in the record.

During the period of his injury, Avey testified that he was on light duty. He would distribute mail and place mail, in order, for route carriers. Then, on February 1 he was assigned to a walking route. He protested to Williams that his doctor's instructions said he could only walk for 1 hour. Williams threatened to suspend him, but then assigned him to a driving route.

On February 2, Avey was again assigned to a walking route by Supervisor Laging, but, after again protesting, he was reassigned to a driving route.

On February 3, Williams called a meeting of the carriers in the post office. Waite testified that Williams complained that he had been carrying mail until 10 p.m. the night before. He continued complaining about the clerks and carriers, and blamed Laging for being too lax with the carriers. Williams said that because of Laging and the carriers in the office he had almost lost his job and it was not going to happen again. He pointed at Avey and said that he caused all the trouble in the office, and that if he got rid of Avey things would run smoothly in the office again.

Avey testified in much the same view except that he testified that Williams said to Laging at the meeting that Avey was the main source of opposition and "once he got rid of him the carriers would follow the line."

Williams did not recall the meeting clearly, but did state that he told Laging that it was not his policy to give Avey preferential treatment.

I do not credit Avey's version of Williams' remarks, and, in this case, I find that Waite fairly described the meeting. There is no question that in a small office the fact that one employee is on light duty shifts the burden to others. If, as in this instance, another carrier does not finish his route, that burden increases. This conversation further points up Williams' frustration and aggravation with his supervisor, and with Avey, because, I believe, of work deficiencies rather than union activities.

Later that day Avey testified that he had a meeting with Williams. According to Avey, Williams called him a liar because the doctor's report showed he had something different. He showed Avey a doctor's report, presumably the one ordered by the Postal Service, and said he would put him on a route which would damage his "name"<sup>25</sup> and put him on light duty again. Then Williams would transfer Avey to South Suburban, or to the Park Forest office.

Waite testified that he heard part of this conversation in which Williams said he was going to transfer Avey to South Suburban as a clerk, or to Park Forest. Avey then replied that Williams had better look at the National agreement about transferring stewards.

Williams stated that Laging was present at the meeting with Avey during which Williams told Avey that he had received a report from the Postal Service doctor that Avey could be moved up to a long route. Avey said he had contrary medical information. They then discussed

<sup>22</sup> This was during the time Williams had been removed as postmaster.

<sup>23</sup> The X-ray report noted "no significant abnormalities are evident on the views obtained."

<sup>24</sup> The record does not indicate whether he had been out of work at that time.

<sup>25</sup> This is obviously a misquote. From the context this word probably should read "knee."



transfer. Williams had instructions from South Suburban to send people on light duty to that office or to Park Forest. Thus, he told Avey that if he could not perform, he would be transferred to one of these places.

In this incident I credit Williams' testimony as corroborated to some extent by Waite, and I do not credit Avey. It is evident from the prior meeting that day that Williams was concerned about productivity, and, having received the Postal Service doctor's report he obviously was concerned about the possibility of malingering by Avey.<sup>26</sup> There is nothing in this showing union animus or hostility.

On February 9 Avey was again assigned to a walking route. Avey again protested to Laging. Laging told him that Williams had said that if Avey refused to carry the route they would discharge him. Avey testified that he said that he would not carry past 1 hour per his doctor's instructions and asked if he should bring the mail back. Laging said yes. Avey then stated that he took the mail out and delivered it for 1 hour and then came back "per my supervisor's instructions."

Williams testified that when he arrived at the post office that morning Laging told him that Avey had said he would only walk 1 hour. About 45 or 55 minutes later Avey came back into the post office, unloaded the mail from his vehicle, and brought it in. He indicated that he had walked his hour and that was all he was going to do. Williams then asked him what he meant. He said that Avey was a postal employee, a carrier, and that it was his job to carry mail. He then directed Avey to go back out on the route and to walk 1 hour, then rest for 10 or 15 minutes, then walk another hour. Avey said he was going to do what his doctor instructed him to do. Williams and Laging then reloaded the mail in Avey's vehicle, and waited for other carriers to return from their routes to deliver it.

Williams testified that he was aware of the 1-hour restriction given by Avey's doctor, but pointed out that Avey was already violating that by casing mail inside the post office for 2 to 2-1/2 hours a day. Williams was also aware of the Postal Service doctor's recommendation that Avey work up to a route gradually. He also noted that Avey gave no signs that his knee was hurting or giving him problems.

I credit Williams' version of this incident. His story was consistent with his demeanor on the witness stand, and shows a reasonable approach to Avey's problem in the light of the Postal Service doctor's report and the instructions he had on dealing with light duty employees. Avey's actions in relying inflexibly on the 1-hour limitation and concealing his doctor's further instruction that he could return to full duty on February 28 show a sly and calculating character, which I found fully borne out in my observation of his demeanor while he was testifying.

<sup>26</sup> I am unqualified to evaluate the medical aspects of these reports, but I view it as significant that Avey had two parts to the report from his own doctor, one saying he could stand or walk 1 hour, and the other that he could return to full duty on February 28. It is illogical that an employee could be so restricted to 1 hour up to February 28, and then go immediately to full duty. It is significant also that Avey testified that he showed only the first part of this report to the Postal Service. Obviously he felt it was in his interest to conceal the other part.

On February 10, 1979, Waite testified that he, Avey, Williams, and Laging had a meeting. While this testimony, so much like the other testimony, is imprecise and conclusionary, it seems apparent that this meeting arose out of Avey's refusal to finish his route on the day before. Williams pointed out the burden of work which had shifted to other carriers, then went on to discuss problems with timecards, telling Donna Daniels, who had come in to the meeting, and asked her to make out a statement as to why the timecards were late. Williams also told Laging to tell the carriers that if the paychecks were late it was Avey's fault.

Williams also mentioned that he had all "good carriers in the office" except Avey. Waite spoke up in defense of Avey. Williams then said that Waite had threatened him twice and he was going to get him. Waite replied, "Don't let the air between us scare you," and Avey added, "He ain't worth it." No one else testified about this meeting.

Accepting Waite's account as true, it seems to me to establish two facts at that point in time: first, that Williams' feelings toward Waite were based on threats which Waite had made to him; and, second, the disrespectful and contemptuous attitude displayed in the final exchange between Waite, Avey, and Williams.

On February 22, 1979, Avey was given a 14-day suspension for disobeying a direct order to carry the mail on February 9. The suspension was made the subject of a grievance which proceeded through the grievance procedure until April 18, 1980, when an arbitrator ordered the suspension removed and backpay awarded to Avey.

Meanwhile, sometime in February, Dombrowski testified that there was a meeting at the Matteson post office. In attendance were Dombrowski, Avey, Williams, and Donna Daniels. The subject matter of the meeting was not revealed, but in view of the timing it may well have concerned the suspension of Avey. Dombrowski merely stated, with no background or context, that Williams said that Avey and Waite were "dummies" and did not know how to process grievances. He referred to Avey as a "turkey" and a "clown." Williams and Daniels denied that he made those statements, and Avey did not testify on this meeting.

In the circumstances under which this testimony was elicited I think Dombrowski was confusing this meeting with the November meeting he also testified about. I credit Williams and Daniels and find that the statements were not made at that meeting.

Dombrowski testified that he then went to Williams' supervisors, who advised him to go to the "labor board." He then filed a charge with the Board on March 13, 1979, in Case 13-CA-18531-P.<sup>27</sup>

On February 17, 1979, Avey was again assigned to a walking route. He complained to Williams, again citing his doctor's instructions. Williams told him that he should do the route and if he did not he would be suspended. Avey again mentioned the doctor's instructions and Williams told him he had better be careful about his job because if he did not have the job he would not be

<sup>27</sup> Dombrowski testified that the charge was later withdrawn. I note, however, that the charge did not mention Avey's suspensions.

the union steward. Avey then went out, walked 1 hour, and returned.

A meeting dealing with this incident was held on February 26 in the swing room with Avey, Laging, and Williams present. Williams told Avey he was going to receive a suspension, and he went on, according to Avey, to tell him that he felt once he "got three suspensions on me that he could fire me. All he wanted was me out of his hair."

Avey filed a grievance based on this suspension. An agreement between the Union and the Postal Service reduced this suspension from 14 to 7 days.

To summarize my findings on these incidents, I find that Williams had reasonable cause, based on the Postal Service doctor's report of December 1978, to conclude that Avey could return to full duty, albeit gradually. Avey's testimony gives no clue as to his actual physical condition, but his failure to mention his own doctor's report allowing him to return to full duty on February 28, and his inflexible insistence that he would walk only 1 hour a day, convince me that he was capable of doing more than that. He would not follow Williams' suggestion to walk for an hour, then rest, then walk again. Considering also Avey's admittedly bad work performance, and the absence of any antiunion considerations in any of the testimony on these incidents, I conclude that Williams' orders were reasonable and legitimate, and Avey's refusals were willfully intended to avoid the arduous task of walking a route.

### *C. The May 25, 1979, Meeting*

We come now to the matters alleged as violations of law in the amended complaint. The first series of alleged violations arise out of a meeting of all employees of the Matteson post office on May 25, 1979, presided over by Williams.

Williams was primarily concerned with insubordination in the post office. According to Avey's version of the meeting, Williams said that he was tired of having people question his orders and tired of questions and complaints. He said that they were to go to their immediate supervisor and not to him. He told the employees about an instance where Carole Hedges had gone to her union steward about a form and added that employees were to go to him first then to the union steward. There was some discussion about Avey taking a 10-minute break and Williams informed him that the breaks were not eliminated and that Avey would get everything that was coming to him. Avey asked another question about signing up an employee for the Union. Williams replied that he could not sign up the employee on the premises but should do it at home. Williams added that there should be no union business on the clock and that Avey's union job was nonproductive as far as he was concerned. Further, Williams told Avey that he liked to file labor charges and that he would take comments from meetings and other sources and put them into Avey's version of the truth. He called Avey a "cancer" and added that when "you had a cancer you cut it out." Avey asked if that was a threat and Williams answered that he could figure it any way he wanted. Avey then said he figured it the way it was intended, and Williams asked if he was

through making smart remarks. Avey said yes, the exchange ended, and they went on to discuss other matters.

Waite's description differs in some respects from Avey's. In the Carole Hedges matter, Waite said that Williams remarked that Hedges had not followed his instructions on a form and had gone to the union steward. Waite did not corroborate Avey's statement that Williams said they were to go to him first before the union steward. Waite included more detail about the insubordination issue, quoting Williams as saying people were kicking stools and jeeps and talking back to him, then talking about misuse of Postal Service jeeps, dangerous driving, and illegal parking. Waite's testimony agreed with Avey's on the question of signing up employees, and that Williams had said they had to do union business off the clock.

Significantly, Waite did not agree with Avey about the labor board charges. Waite recalled that Williams said that Avey was taking comments from these meetings and going to the Union and telling lies about him. Waite did corroborate Avey's recollection of the exchange between Avey and Williams about "cancer."

Carole Hedges testified that Williams had left a note on her timecard about filling out form 1564A,<sup>28</sup> and that if she had any questions she should have gone to him and not to John Avey. He went on to talk about overtime and curtailment of mail, adding that there was to be no union business while on the clock. Williams also said that Avey was the "main blocking efficiency of the post office, in that he was a cancer and that as his daddy always told him, you cut cancer out."

Cheryl Cousins, called as a witness by Respondent, did not hear Williams threaten employees with discipline if they went to the union steward. She said that Williams did not mention Avey, or anything about signing her up for the Union. Her recollection of the meeting was that they talked about overtime, curtailment of mail, forms and how to use them.

Donna Daniels did not have too firm a memory of this meeting, but did indicate that there was discussion about overtime and "ten thousand and one things." She also testified that she never heard Williams refer to Avey as a "cancer."

Williams stated that his agenda for this meeting concerned excessive overtime, sick leave, incorrect data on forms concerning deliveries, work hours, and production rates. He stated that he also discussed uniforms, driving habits, and employees leaving duty assignments without going to their supervisor. He told the employees that under no circumstances were they to leave their duty assignments without seeing their supervisor unless there was an emergency.

Williams denied mentioning the Union, or Avey's efficiency, or "cancer."

In this incident I credit the testimony of Williams, Daniels,<sup>29</sup> and Cousins.<sup>30</sup> As I have indicated I have

<sup>28</sup> A form containing information about a mail route.

<sup>29</sup> Daniels was not good at remembering dates, but once her memory of a particular incident was fixed, her recall was good. I was impressed with her demeanor and found her to be a completely credible witness.

<sup>30</sup> Cousins had a very poor memory and was obviously uncomfortable on the witness stand, but she appeared to be truthful in what she did remember.

very little faith in the testimony of Avey and Waite. Even so, Waite's version differs from Avey's in regard to the necessity to go to Williams before seeing the union steward, and whether Williams referred to the Board or the Union. Hedges' version differs also, not mentioning the insubordination, and agreeing with the union business off the clock, and the "cancer" incident, although with respect to the latter remark Hedges remembered it differently from Avey.

Thus, I do not find that the General Counsel has established by a preponderance of the credible evidence that Respondent, through Williams, instructed its employees not to go to a union steward without prior permission from a supervisor; threatened employees with discipline if they did so;<sup>31</sup> instructed its employees not to engage in union activity while on the clock; or threatened Avey with discharge because of his union activities or because he had given testimony to agents of the Board.

#### *D. The May 30 and 31 Meetings*

On May 30, 1979, Williams called Avey into a meeting with himself and Donna Daniels, who was acting as a supervisor. Avey testified that Williams said he was angry because Avey had called in twice during the previous week to say that he would be late finishing his route, and that he was thinking of firing Avey or giving him separation papers. Daniels asked how Avey could tell at "1:15" if he could not finish on time and Williams then said to her to "be careful of this man because he likes to file labor charges."

Williams remembered a discussion with Avey and Daniels about Avey informing management when he felt he could not go out and deliver a route in 8 hours. He denied that he said anything about the Board.

Donna Daniels placed this meeting on May 31, but she testified credibly that she had a discussion in the swing room with Avey, in Williams' presence, about how Avey could tell at 9 a.m. that he could not finish his route on time. Avey replied that he was a carrier and he could tell.

I credit the version told by Williams and Daniels and do not credit Avey's story.<sup>32</sup>

On May 31 Avey testified that Williams called him into his office. He said that a clerk had told him that Avey had been talking for 22 minutes without working. According to Avey, Williams then said he had used stool pigeons too. Avey denied the charge, and Williams replied that he had his witnesses and that he was going to fire Avey. Williams went on to say that Avey had been making malicious and untrue statements to the Board, and all he needed was three suspensions and Avey would be fired and he did not care if the Union got Avey's job back or not. He just wanted Avey off of his hands, and wanted the office to return to normal. Williams also said

that he had learned something in the last Board charge, that all he had to do was deny everything, especially the meetings between the two of them.

Williams did not testify about the meeting, but, consistently with my prior findings herein, I do not credit Avey's testimony beyond the fact that Williams may have accused him of talking instead of working.

Thus, I do not find that Respondent violated the Act in these two conversations on May 30 and 31.<sup>33</sup>

#### *E. The October and November Incidents*

In October 1979, the post office at Matteson posted some regular routes for bids. There was some problem whether the posting was in accordance with the local agreement.<sup>34</sup> Avey and Williams had a discussion about this in the swing room on October 25, 1979. According to Avey, Williams said that he had received a call from South Suburban informing him that Dombrowski was questioning this posting. Williams asked Avey if he knew anything about it and Avey said he did not. Williams then asked if Avey had made a telephone call and Avey responded that it was none of his business. Williams then said that if Avey had a grievance he was supposed to go to his immediate supervisor as stated in the National agreement instead of Dombrowski. Avey said there was no grievance. Williams then told Avey that he had not gone through the chain of command and that he would receive a suspension. There was some further discussion about the posting of regular routes and the meeting ended.

Again Williams did not testify concerning this meeting, but, again, I do not credit Avey's version of what happened and I find no violation of the Act in this incident.

On October 26 there was a meeting of all the employees with Williams. Avey's version had Williams announcing at the outset that he had a tape recorder, that he was going to record the meeting for his own protection, and "if anyone said anything that wasn't on this tape he would know about it." Williams then said that a carrier had called Dombrowski and questioned the notices he had posted. He told the employees that they were not to contact their union president, either carriers or clerks, adding that they were to go through their immediate supervisor first, not to Dombrowski, who was not their supervisor.

Waite's version of this meeting accorded with Avey's on the tape recorder, although Waite quoted Williams as saying to them that if they did not want to be heard to say nothing. Waite then testified that Williams told the employees they could not go to the union president without going to Williams or to a supervisor. Waite said that Williams said that employees were going to Dombrowski and telling lies about him and that he was deeply hurt by this.

<sup>31</sup> There was no evidence that this was done, even if I were to credit the General Counsel's witnesses.

<sup>32</sup> I note in this regard that in the notice of removal given to Avey on December 19, 1979, there is reference to a "Deferment of Step Increase (Poor Work Performance)" dated April 21, 1979. There is no reference to this in the testimony and apparently it was never made the subject of a grievance.

<sup>33</sup> Another allegation in the amended complaint mentions another violation in the first week of June 1979, but there was no evidence of any incident in that period of time.

<sup>34</sup> Presumably this was a local supplement to the national collective-bargaining agreement, but there is no further explanation in the record.

Carole Hedges testified about this meeting, but her account is somewhat different. She mentioned the tape recorder, but said that Williams said he was wearing it to protect himself in case anyone wanted to go to the Union and say something that was not true. Hedges mentioned that Williams said they were not to run to the Union every time they had a problem, but to ask him.

Cheryl Cousins testified that she was at the meeting and could not remember much of what occurred. She did say that Williams could have told employees not to contact the union president, but to go to their supervisor.

Williams testified that he did say that "it seems like when he had one of these meetings, I need a tape recorder so Mr. Avey would not misquote me incorrectly." He said that he discussed overtime, poor performance, uniforms, vehicle safety, proper driving, and forms used for customer complaints. He did not deny, but was not asked, about the statement that he told employees they had to see their supervisor before going to see the union president.

I do not credit the version of this meeting given by Avey and Waite. Further I do not credit Carole Hedges' testimony, in this instance, based primarily on my observation of her demeanor while testifying. Even if I were to credit Hedges, her version of Williams' comment, that employees "were not to run to the Union every time we have a problem, we are supposed to ask Mr. Williams," does not impress me as a prohibition against seeking assistance from the Union. I do not find a violation of law in this meeting.

Along the same line as this October 26 incident, Avey testified that at a meeting called on November 29, 1979, to discuss preparations for the Christmas rush, Williams told the employees that he had "a steward problem in that office," and that the steward did not understand the right of permission in the contract.

The only other testimony on this incident is that of Cheryl Cousins, but her memory of it is not reliable. However, I cannot rely on Avey's unsupported testimony, and I do not find that this incident happened as he stated.

#### F. Waite's Discharge

In my findings and conclusions on the discharge of Wayne Waite, I have relied on the credible testimony of Bobbie Williams and Donna Daniels, and not on the testimony of Waite and Avey.

The incident which led to the discharge occurred on the morning of November 15, 1979. Daniels was a temporary supervisor that day and she observed some mail in a container next to where Waite was casing mail for his route.<sup>35</sup> The mail in question consisted of circulars. Daniels said she would like him to carry that mail. Waite ignored her. She came closer to him and repeated the request, pointing to the mail. He then turned to her and said, "the goddamn regular don't do it and I'm not doing it." Daniels turned and walked away.

Later that day she called Williams, who was not in the office, and told him to get someone else for the supervi-

sor's job because she did not like being cursed at. He asked her what had happened and she told him. Williams told her to calm down.

The next morning Williams asked Daniels and Waite to come into the swing room. Waite asked if he could have union representation and Williams said "of course." Waite then called to Avey, who joined them. Williams and Waite sat down at a table in the swing room while Daniels and Avey remained standing. Williams asked Waite to read an article in the carrier handbook, then asked Waite if his supervisor had instructed him to carry out all the mail the day before. Waite said yes. Williams then asked if he had done it. Waite started to give an explanation but Williams cut him off, saying that all he wanted was a yes or no answer. Waite then said no. Williams said that the meeting was over. Waite then said that he had something to say but Williams repeated that the meeting was over. Waite then got red in the face, pointed at Williams, and said that he had something to say, and that he "had a right." Waite began to get out of his chair and was then restrained by Avey who came over to him, put his hands on his shoulders, and screamed at him to shut up. At the same time Williams was shouting at Waite, asking if he was threatening him, or meant to harm him. Waite attempted again and again to rise from the chair but he was restrained by Avey, who continued to scream. Finally Avey hit Waite and knocked him back down into his chair. At this point Waite quieted down.

In the aftermath of this incident which had been so loud as to disturb customers at the windows of the post office, Williams went to his office and called South Suburban for instructions. He was told to get Waite out of the office and he instructed Daniels to send him out on his route. Williams then left the office for about 4 hours in order to regain his composure. He returned, and after more consultation with his superiors at South Suburban, prepared a proposed notice of removal of Waite from his position at the Matteson post office. The basis for the removal was the incident described above, and his earlier suspension in October 1977, along with several lesser disciplinary items.

As a veteran Waite had the right to respond to the notice of proposed removal, but he failed to answer; and on December 4, 1979, he was advised by the director of customer services at South Suburban that he was discharged effective January 11, 1980.

It is clear to me that Waite tried to get at Williams in an attempt to attack him physically. Both Williams and Daniels took that to be so, and even the testimony of Waite and Avey on the incident, which I have not credited, is in agreement that Avey was screaming and restraining Waite from getting out of his chair. This type of action by Waite is not uncharacteristic as shown by his previous suspension in October 1977, and his physical challenge to Williams on February 10, 1979. Thus, Williams could reasonably have believed that Waite was about to attack him, and his reaction was proper. This kind of thing is a step beyond mere disrespect<sup>36</sup> or name

<sup>35</sup> The mail was in a container referred to as a "tub of flats," also in the record as a "tub of glass."

<sup>36</sup> The record here shows an abundance of disrespect and a turbulent, disorderly office. This might reflect on Williams' qualities as a manager.

*Continued*

calling. In the absence of antiunion motivation, and any evidence of disparate treatment, I cannot find a violation of the Act in this discharge.

#### *G. Avey's Discharge*

On October 26, 1979, Avey was given a bundle of postage due letters to deliver to a business concern on his route. These were business reply letters being returned to the company, and were tied, together with a form showing the amount deducted from the company's account, in a single bundle. Donna Daniels testified that at the close of the day, after Avey had completed his route and gone home, she discovered this bundle, undelivered, in a sack of outgoing mail which Avey had collected from boxes along his route.

The next morning Daniels asked Avey if he knew what had happened to this mail. Avey said he had delivered it. Daniels asked if he was sure and he said yes. She then produced the mail and asked him to look at the date. He did, then said he guessed he never had the mail. No action was taken, and there is no evidence of any discussion between Daniels and anyone else about this incident.

Then, on November 13, Avey had returned from his route and was clearing his registered mail receipts with a clerk when it was noticed that one receipt was missing. The clerk called Daniels who came over and checked, finding one receipt missing. Avey said he would check his bags and she agreed. He checked his bags, the outgoing mail table and other places, then came back to Daniels and asked permission to go out and check his vehicle. She agreed and he did so, but did not find the receipt or the piece of registered mail. He came back and said he could not find it, and that he did not know what happened, and he did not understand. Daniels then asked him if he had written down anything about the registered mail. He said he had not and then "proceeded to cuss himself and hit himself in the head." Daniels told him to go back out over the route and volunteered to stay in the office until he got back. She described Avey at that point as "like a zombie" and he punched out and went home.

Avey returned to work the next day and went out on his route but did not find the registered mail or the receipt.<sup>37</sup>

Daniels told Williams the next day, having already notified the postal inspectors as required.<sup>38</sup> Williams called Avey in and asked if Daniels had given him the opportunity to find the registered mail. He said yes. Williams then told Avey he could look that day, and if he found it they would call off the inspectors. He then asked Avey if he knew the penalty for losing a registered article, and said, "Do you realize you lost a red?"<sup>39</sup> Avey said "So."

and might, indeed, influence an arbitrator in these circumstances, but it does not show antiunion motivation, or a pretext for discharge.

<sup>37</sup> It had not been found at the time of the hearing, and, as far as could be determined no claim was ever put in by the sender or the addressee.

<sup>38</sup> Apparently it is up to the inspectors to take charge of any search or investigation in these matters. There is no evidence that Williams or Daniels did anything further on that.

<sup>39</sup> Registered mail article.

Williams asked him what he meant by that, and Avey shrugged his shoulders and left.

Williams then prepared a notice of removal on Avey, citing as the reasons, first, the failure to deliver the postage due letters on October 26, and, second, the loss of the registered mail on November 13. In addition, the letter stated that his past record was considered in taking this action. That record included his first suspension in January 1978, but noted that had been rescinded; the revocation of his driver's license, and also its restoration; a settlement of an automobile accident claim; his suspension in March 1979 (which was later reversed in an arbitration award on April 18, 1980); the deferment of his step increase because of poor work performance, in April 1979; and another suspension in April 1979, which was later reduced by agreement of the parties.

Avey did not deny the fact that he had failed to deliver the postage due letters, nor his loss of the registered mail. His version of the events following these two events differed from that related by Daniels and Williams. I do not credit Avey, in this, as throughout the case, and find that the two instances happened as I have described above.

Therefore, in the absence of antiunion motivation, or any evidence of disparate treatment, I find that Avey's discharge was for the reasons stated in the notice of removal dated November 19, 1979. There is no evidence in the record that any action against Avey was taken because he filed charges or gave testimony in the form of statements to the Board.

Thus, I find that the General Counsel has not shown by a preponderance of the credible evidence that Respondent has violated Section 8(a)(1), (3), and (4) of the Act.

#### CONCLUSIONS OF LAW

1. The United States Postal Service is subject to the jurisdiction of the National Labor Relations Board by virtue of the Postal Reorganization Act, 39 U.S.C. § 1209 *et seq.*

2. The National Association of Letter Carriers, Branch 4016, is a labor organization within the meaning of Section 2(5) of the Act.

3. The United States Postal Service has not engaged in any violations of Section 8(a)(1), (3), or (4) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>40</sup>

This complaint shall be, and it hereby is, dismissed in its entirety.

<sup>40</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.